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To
Frederick Lewis Keller, Esq.

from
The Author.

OBSERVATIONS

ON

THE CIVIL LAW.

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OBSERVATIONS

THE CIVIL LAW

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OBSERVATIONS
ON THE
STUDY OF THE CIVIL LAW.

BY
DAVID IRVING, LL. D.

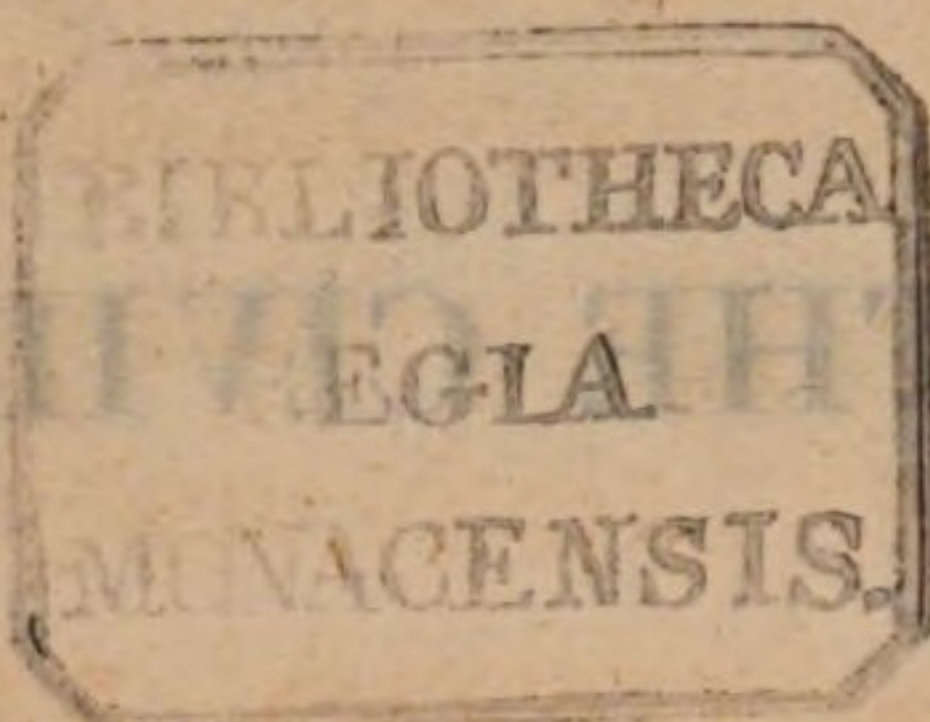
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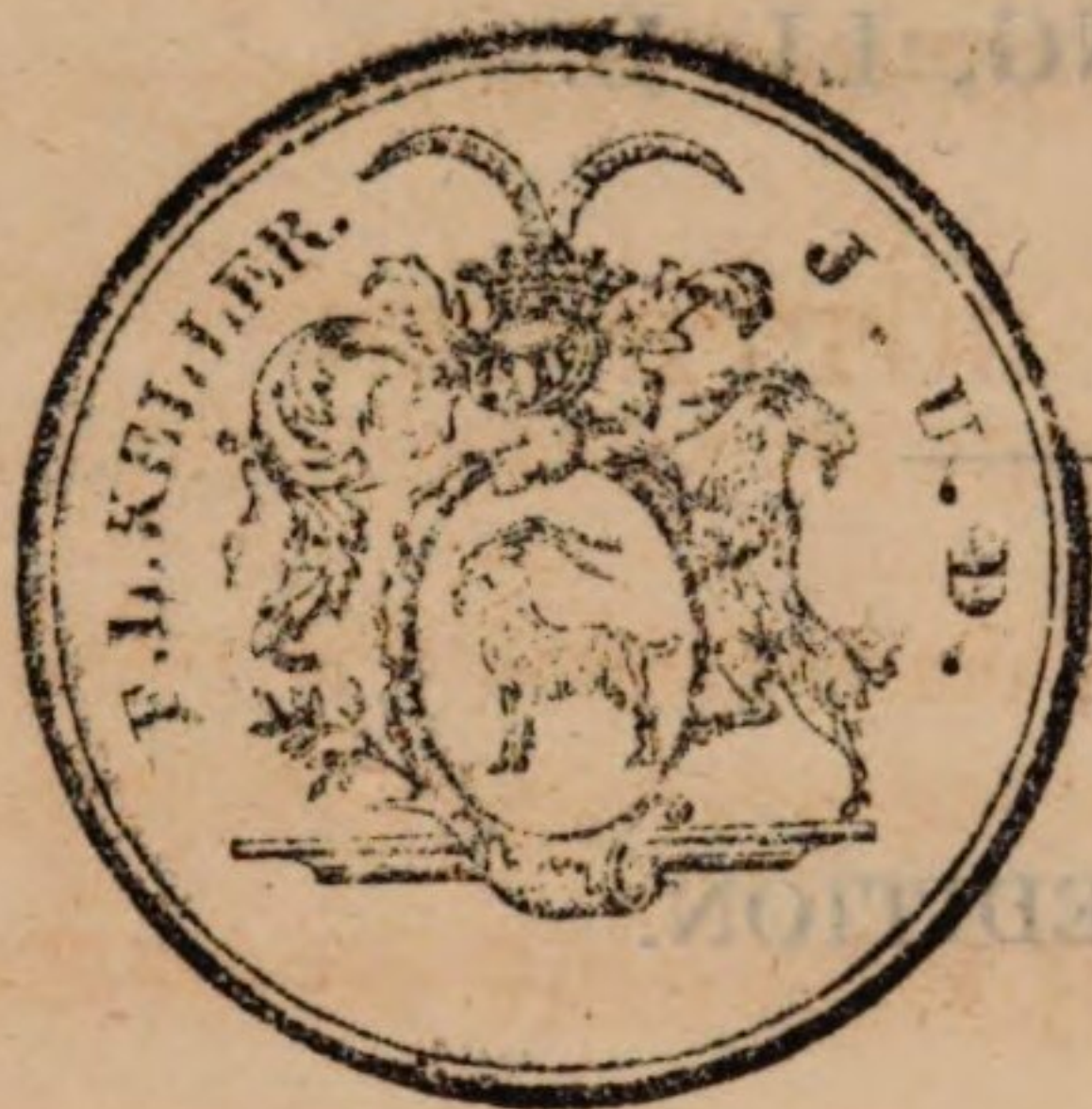
1823.

OBSERVATIONS

OF THE



STUDY OF THE



EDINBURGH:

BY

OLIVER & BOYD, HIGH STREET.

1888.

TO

GUSTAVUS HUGO, LL. D.

KNIGHT OF THE GUELPHIC ORDER, PRIVY COUNSELLOR OF JUSTICE,
AND PROFESSOR OF THE CIVIL LAW IN THE

UNIVERSITY OF GÖTTINGEN,

THESE OBSERVATIONS ARE INSCRIBED

IN TESTIMONY OF THE AUTHOR'S HIGH RESPECT

FOR

HIS TALENTS AND LEARNING.

Fidenter affirmateque oportere constituo, gentes omnes Romanis legibus operam dare, sed suis vivere. Porro autem Romanas leges cum dico, non hæc certi juris, sed ipsius prope justitiæ appellatio est, a recta ratione expromptæ, magnoque deorum immortalium beneficio populo terrarum principi patefactæ; quæ si non cunctis civitatibus, aut negotiis, aut temporibus convenit, succus tamen inde, sanguisque existit, qui ad alios mores opportuna derivatione ductus, ingenia vel efferatissima lenire potest, et cujusque instituta gentis ad bonum et honestum conformare.

FACCIOLATI Orationes, p. 127. Patavii, 1723, 8vo.

OBSERVATIONS
ON THE
STUDY OF THE CIVIL LAW.

THE system of Roman jurisprudence has for many centuries been regarded as one of the most conspicuous monuments of human wisdom and genius; and its powerful influence on modern legislation has been felt and acknowledged by every civilized nation of Europe. Although it has long ceased to retain the full authority of written law, it can never cease to attract the notice, and to excite the admiration of lawyers who are capable of ascending to this clear and copious fountain of juridical knowledge.

The ardour and enthusiasm with which the study of the civil law was once prosecuted in modern Europe, will in all probability never be revived. This elegant and manly pursuit may formerly have engrossed a larger share of attention than it can justly claim ; but there are many reasons for supposing that, in this country at least, it is too much neglected, both by professional lawyers, and by those who aspire at the reputation of general learning. To arrive at any considerable proficiency, will certainly require some force and perseverance of mind ; nor is the gay and changing taste of our contemporaries easily attracted by the disquisitions of Caius, Ulpian, and Paulus. That the study of the civil law is however of real importance, that a competent knowledge of it may be extremely useful to the classical scholar, as well as to the practical lawyer, may be asserted with at least some degree of confidence.

In those countries most remarkable for the extent and solidity of their erudition, namely, in Germany and Holland, this study has long constituted an essential branch of a liberal education ; and they persuade themselves that

many advantages result from such a plan of academical discipline. Many of their professed scholars are excellent civilians, and many of their professed civilians are excellent scholars. It is sufficiently obvious that those who are acquainted with the phraseology and with the spirit of the Roman law, will readily understand many passages of the Latin classics which to others must remain obscure and unintelligible^a. Even the poets admit of such illustration: Plautus and Horace may frequently be explained from the writings of the civilians.

These general assertions will best be confirmed by a particular example; and the examples are so abundant that the chief difficulty lies in the necessity of making a selection. The subsequent passage in one of the epistles of Pliny may however be regarded as sufficient

^a "Neque enim ignorabat," says Ernesti, "quam multa essent in libris Latinis, quæ sine juris illius scientia satis intelligi et explicari non possent." (*Narratio de J. M. Gesnero: Opuscula Oratoria*, p. 327. Lugd. Bat. 1762, 8vo.)—Capperonnier, who published a splendid edition of Quintilian (Paris. 1725, fol.) has betrayed great ignorance of the Roman law, for which he is sufficiently chastised by his able and unrelenting adversary Burman. (*Epistola ad C. Capperonnerium de nova ejus Quinctiliani Editione*, p. 85-92. Leidæ, 1726, 4to.) "Senties, spero," says Burman, p. 90, "ubi hanc epistolam legeris, opus esse aliqua juris peritia, qui Fabium tractare et intelligere velit."

for our purpose. “ Tu quidem pro cætera tua diligentia admones me, codicillos Aciliani, qui me ex parte instituit heredem, pro non scriptis habendos, quia non sint confirmati testamento : quod jus ne mihi quidem ignotum est, quum sit iis etiam notum qui nihil aliud sciunt. Sed ego propriam quandam legem mihi dixi, ut defunctorum voluntates, etiamsi jure deficerent, quasi perfectas tuerer. Constat autem, codicillos istos Aciliani manu scriptos. Licet ergo non sint confirmati testamento, a me tamen, ut confirmati, observabuntur^b.” This point of law, says Pliny, is even known to those who are ignorant of every other ; but it seems nevertheless to have been completely misapprehended by a late respectable writer, who has thus stated the doctrine of codicils : “ When additions were made to a will, they were called *codicilli*. They were expressed in the form of a letter addressed to the heirs, sometimes also to trustees (ad fideicommissarios). It behoved them however to be confirmed by the testament. *Plin. Ep. ii. 16^c*.” The first of these

^b Plinii Epistolæ, lib. ii. ep. xvi. edit. Gesner.

^c Adam's Roman Antiquities, p. 56.—Dr. Adam has erroneously

sentences contains a definition of a modern codicil ; but, according to the civil law, a codicil was a less solemn form of a will. It might be made by a person who was either testate or intestate ; in other words, it could either accompany or subsist without a testament. A person might leave several codicils ; whereas no *pagan*, that is, no person who was not a soldier, could leave more testaments than one. It was essential to the character of a testament that it should institute an heir ; but a codicil was in all cases incompetent for that purpose, and could only bequeath legacies and trusts : it therefore could not disinherit one heir, or substitute another. It was a maxim of law that an earlier testament was always cancelled by a later ; and where the codicil was of a prior date to the will, it was held to be ineffectual unless confirmed by that will. The notion of this

stated that testaments, like all other deeds, were always written in Latin, and that a legacy expressed in Greek was not valid. This error seems to be copied from Heineccius (*Antiquitates Romanæ*, p. 382.), who has however avoided it in his *Elementa* and his *Recitationes*. The assertion was true in the age of Ulpian, to whose authority they refer ; but in the year 439 it was expressly enacted that any person might write his testament in Greek ; “ ut etiam Græce omnibus liceat testari.” (*Cod. lib. vi. tit. xxiii. l. 21. § 4.*)

writer, that a codicil must succeed a testament, and that it must nevertheless be confirmed by a testament, cannot very easily be comprehended; but the statement of Pliny, when properly understood, is conformable to the established doctrine of the civilians. The individual whom he mentions had first made a codicil and afterwards a testament: the one was therefore void because it had not been confirmed by the other; but he expresses his determination to take no advantage of this legal informality.

The style of the ancient lawyers, when they write in Latin, is worthy of considerable attention; and those unacquainted with their works are unacquainted with the full compass of that language. They often display much propriety and even elegance of diction^a. The body of the Justinian law, compiled at Constantinople, and during so late a period as the sixth century, is upon the whole remarkable for the elegance of its Latinity. The terse and appropriate

^a “ Niuno autore de’ bassi secoli,” says Denina, “ si può trovare che tanto si assomigli agli autori del secolo d’oro, quanto i giureconsulti, che fiorirono cento e cinquant’ anni dopo Cicerone, si avvicinano all’ eleganza e proprietà di quelli che scrissero sotto Augusto.” (*Discorso sopra le Vicende della Letteratura*, p. 58. *Glasgwa, 1763, 8vo.)

phraseology which so frequently occurs in the Institutes and Pandects, was transfused from the productions of a purer age ; nor is it a matter of surprise that it should occasionally be debased by a grosser mixture. “ It is remarkable,” as Mr. Hume has well observed, “ that in the decline of Roman learning, when the philosophers were universally infected with superstition and sophistry, and the poets and historians with barbarism, the lawyers, who in other countries are seldom models of science or politeness, were yet able, by the constant study and close imitation of their predecessors, to maintain the same good sense in their decisions and reasonings, and the same purity in their language and expression^e.”

From their ignorance of the peculiar language of the civilians, men of real erudition have sometimes felt themselves much at a loss, or have been betrayed into great mistakes. Gisbert Cuper, for example, having occasion to quote a passage from a letter of Brenkman, is obliged to confess himself unable to comprehend the meaning of a particular expression.

^e Hume's Hist. of England, vol. iii. p. 300.

“ Perinde autem est, an per folia, an per aversionem (*je ne sai ce que ce mot veut dire*) pretium constituatur^f.” To sell any thing *aversione* or *per aversionem*, corresponds to our vulgar phrase of selling by the lump^g. Cujacius supposes the term to have been thus applied, “ quod scilicet quasi *aversi* quodammodo negotium ita contrahamus, re omni neque perspecta nec explorata bene^h.”

It is related of the celebrated Politian, by whom the study of the Roman law had by no means been neglected, that when consulted respecting the signification of *suus heres*, he was unable to offer any explanation; and yet this technical phrase is not entirely excluded from those classical writings with which he

^f Gebaveri Narratio de H. Brenkmanno, p. 33. Gotting. 1764, 4to. —This volume likewise contains a life of Sir Henry Newton, LL. D. judge of the high court of admiralty. Newton was envoy extraordinary to Florence and Genoa: he was much connected with the scholars of his time, and had procured Brenkman access to the Florentine manuscript of the Pandects. A collection of his writings was published under the title of *Epistolæ, Orationes, et Carmina*. Lucæ, 1710, 4to. A supplement was printed at Amsterdam during the same year.

^g Dukeri Opuscula de Latinitate Jurisconsultorum Veterum, p. 437. Vicat, Vocabularium Juris Utriusque, tom. i. p. 150.

^h Cujacius ad Institut. lib. iii. tit. xxiii. § 3.

was so familiar. It occurs in the following passage of Ovid :

Vivit enim in vobis facundi lingua parentis,
Et res heredem reperit illa suumⁱ.

Heredes sui were natural and domestic heirs, the children or other descendants of the deceased, such as were under his power, and were not to fall under the power of another after his death^k. To express their peculiar rights, the modern civilians frequently employ the barbarous substantive *suitas*. It is related of Schurzfleisch, a German philologer, that when some person presented him with a tract “*De Jure Suitatis*,” he supposed the word to be formed, not from *suus*, but from *sus*, and laughed at the civilians for discussing the rights of hogs^l.

The Roman history, if studied to due advantage, must be studied in conjunction with the Roman law. Neither of these studies indeed

ⁱ Ovidii Epistol. ex Ponto lib. ii. ep. ii. v. 53.—See Grotius, *Florum Sparsio ad Jus Justinianum*, p. 56.

^k “*Sui quidem heredes ideo appellantur quia domestici heredes sunt, et vivo quoque parente quodammodo domini existimantur.*” (Caii *Institutiones*, lib. ii. § 157.)

^l Otto ad *Institutiones*, p. 301.—“*Risisse fertur jurisconsultos, qui de jure porcorum disputarent.*”

can be properly separated from the other : without an accurate knowledge of the history of Rome, the civilian will undoubtedly be betrayed into the grossest misconceptions^m. This observation might be confirmed by striking examples from the writings of the earlier commentators on Justinianⁿ. Of the light which

^m See Schultingii *Oratio de Jurisprudentia Historica* ; subjoined to his *Jurisprudentia Ante-Justiniana*, p. 908.—“ Ideoque,” says Burman, “ maxime semper mihi arridebat ea ratio tractandi juris, quæ subsidium ex historia et antiquitate peteret.” (*De Vectigalibus Populi Romani*, præf. *Leidæ, 1734, 4to.)

ⁿ The *glossatores* were generally very ignorant of classical antiquity, and were therefore frequently left to grope their way. The merits of this class of commentators have however been highly extolled by an able though somewhat paradoxical writer. “ Ad me quod attinet,” says Wieling in his *Oratio pro Glossatoribus*, “ fremant omnes licet, dicam quod sentio : unus mehercle Irnerius, unus item Accursius, in vulgato glossarum corpore, omnes omnium recentiorum commentarios, si quis legum causas, et fori usum viderit, et auctoritatis pondere, et utilitatis ubertate, longissime exsuperat.” (*Lectiones Juris Civilis*, &c. p. 309. *Traj. ad Rhen. 1740, 8vo.) Of their mode of illustrating the text of the civil law, I shall produce one specimen, which will probably be deemed sufficient : it is from the gloss of Accursius on the second title of the Institutes, *de jure naturali, gentium, et civili*. “ CASUS. Quidam scholaris accessit ad principem, et talem proposuit quæstionem : Domine Imperator, dicite mihi quæ differentia est inter jus gentium et jus civile : et ideo quæro, quia volo unum jus ab alio scire discernere. Imperator respondit : amice, dico tibi quod omnes populi, qui utuntur jure scripto et jure non scripto, pro parte utuntur suo proprio jure, seu civili, et pro parte utuntur jure communi omnium hominum. Secundo dicit scholaris : Domine Imperator, vos loquimini sic obscure, quod non intelligo vos. Quid est hoc dicere, quod omnes populi, qui utuntur jure scripto

ancient history may derive from the civil law, I shall here introduce a single illustration.

It is commonly regarded as a very curious and remarkable fact, that although the Romans were disposed to tolerate every other religious sect^o, yet they frequently persecuted the Christians with unrelenting cruelty. This exception, so fatal to a peaceable and harmless sect, must have originated in circumstances which materially distinguished them from the votaries of every other religion. The causes and the pretexts of persecution may have varied at various periods; but there seems to have been one general cause which will readily be apprehended by those who are intimately acquainted with the Roman jurisprudence. From the most remote period of their history, the Romans had conceived extreme horror against all

et jure non scripto, pro parte utuntur suo proprio jure, et pro parte utuntur jure communi omnium hominum? Dicit imperator: quod dixi tibi, quod utuntur pro parte suo proprio jure, sic intellige," &c. (*Institutiones, Fr. Accursii Glossis illustratæ*, p. 14. *1555, 8vo.) The Latinity of this passage is scarcely exceeded by that of the *Epistolæ Obscurorum Virorum*.

^o Bynkershoek de Cultu Religionis Peregrinæ apud Veteres Romanos: Opera, tom. iii. p. 237.—See however what is stated in Bishop Watson's *Apology for Christianity*, p. 104.

nocturnal meetings of a secret and mysterious nature. A law prohibiting nightly vigils in a temple has even been ascribed, though with little probability, to the founder of their state^p. The laws of the twelve tables declared it a capital offence to attend nocturnal assemblies in the city^q. And, to omit other authorities, the “*Senatusconsultum Marcianum de Bacchanalibus*” is of a similar tendency; though it is indeed directed against a particular institution, which was believed to have been productive of the greatest enormities^s. This then being the spirit of the law, it is obvious that the nocturnal meetings of the primitive Christians must have rendered them objects of peculiar suspicion, and

^p Balduinus ad *Leges Romuli*, p. 7. *Paris. 1554, fol.—“*Sed eruditus,*” says Funccius, “*illæ non pari modo probantur omnibus: cum et maximus Cujacius illas fuisse confictas asserere nullus dubitaverit. Revera positiones ipsæ, earum formæ, numerus, et ordo, cum insigni figmentorum acervo, nemini non prima fronte apparent.*” (*Leges XII. Tabularum*, p. 5. Rintelii, 1744, 4to.) See likewise Idsinga, *Varia Juris Civilis*, p. 1. Harlingæ, 1738, 8vo.

^q Gothofredus ad *XII. Tab.* p. 143. Gravina, p. 226.

^s Maffei, *Istoria Diplomatica*, p. 125. Mantova, 1727, 4to. Bynkershoek de *Religione Peregrina*, p. 259. Livius a Drakenborch, tom. vii. p. 197. Taylor’s *Elements of the Civil Law*, p. 546.—Bynkershoek has added notes, and Taylor a very copious and learned commentary. This curious relic may be found in various other works,

^t Livii *Hist. lib. xxxix. cap. viii.*

exposed them to the animadversion of the magistrate. It was during the night that they usually held their most solemn and religious assemblies^t; for a practice which may be supposed to have arisen from their fears, seems to have been continued from the operation of other causes. Misunderstanding the purport of certain passages of scripture, they were led to imagine that the second advent, of which they lived in constant expectation, would take place during the night; and they were accustomed to celebrate nightly vigils at the tombs of the saints and martyrs. In this case therefore they incurred no penalties peculiar to the votaries of a new religion, but only such as equally attached to those who professing the public religion of the state, were yet guilty of this undoubted violation of its laws^u.

^t Böhmeri Dissertationes Juris Ecclesiastici Antiqui ad Plinium Secundum et Tertullianum, p. 35. Lipsiæ, 1711, 8vo.

^u “Adfirmabant autem,” says the younger Pliny, “hanc fuisse summam vel culpæ suæ, vel erroris, quod essent soliti stato die ante lucem convenire.” (*Epistolæ*, lib. x. ep. xcvi.)—This application of the existing laws to the case of the Christians has been noticed by various writers. “Sed tempore Tertulliani, plane injuria, cœtus omnes Christianorum hoc nomine suspecti, et infames vulgo erant, dum profani homines sanctissimos piorum congressus tantum non pro Bacchanalibus habent.” (Balduinus *ad Leges Romuli*, p. 15.) “Sed hoc ipso Christi-

The splendid production of Mr. Gibbon exhibits many striking proofs of the varied illustration which ancient history naturally borrows from the civil law. This source of information is not indeed entirely neglected by Dr. Ferguson^w, but he does not appear to have been fully

ani rei Romanis legibus; cautum enim 12 Tab. ne nocturni cœtus in urbe agitentur." (Wowerus *ad Minucium Felicem*, p. 73, edit. Ouzellii. *Lugd. Bat. 1672, 8vo.) "Hæc cum ita sint, facile apparet quare nocturnæ coitiones Christianorum in crimen traherentur publicum, causamque tot persecutionum præberent." (Böhmeri *Dissertationes*, p. 38.)

Dr. Taylor did not therefore, as an angry antagonist avers, make any *discovery* when he illustrated this application of the Roman law, but it may perhaps be admitted that he expressed himself with too great latitude. "It is not true," he remarks, "that the primitive Christians held their assemblies in the night time, to avoid the interruptions of the civil power; but the converse of that proposition is true in the utmost latitude, viz. that they met with molestations from that quarter, because their assemblies were nocturnal." (*Elements of the Civil Law*, p. 579.) This position was attacked by Bishop Warburton, with his usual ability, and in his usual style. (*Divine Legation of Moses*, vol. iii. p. xxxv.) "Perhaps," says a learned civilian in a letter to the writer of these pages, "it may not be amiss for me to tell you that Taylor had one day dropped in conversation that Warburton did not understand Greek. The story reached Warburton's ears, and he most unmercifully wreaked his vengeance upon the offender." See Nichols's amended account of Dr. Taylor, in a publication entitled "Two Music Speeches at Cambridge, by Roger Long and John Taylor," p. xix. Lond. 1819, 8vo. In Warburton's letters to Hurd, a singular monument of the strength and weakness of the human understanding, Taylor is treated as a learned dunce. (*Letters from a late eminent Prelate to one of his Friends*, p. 225. *Lond. 1809, 8vo.)

^w Dr. Ferguson's *Hist. of the Roman Republic* generally displays an elegant simplicity of style, and his reflections are frequently those of a

aware of its importance; and this circumstance has unavoidably rendered some parts of his work very unsatisfactory. "Among the books which I purchased," says the former historian, "the Theodosian Code, with the commentary of James Godefroy, must be gratefully remembered. I used it (and much I used it) as a work of history, rather than of jurisprudence; but in every light it may be considered as a full and capacious repository of the political state of the empire in the fourth and fifth centuries*." A very respectable English divine has likewise borne testimony to the historical merit of this

man of genius; his political speculations are not unworthy of a disciple of Montesquieu. The language however is not always correct; and perhaps it may sometimes be supposed to descend beneath the dignity of historical composition. The excessive ornament of Mr. Gibbon's style may probably have led him to adopt this plainness of expression: in various respects indeed these two writers form a complete contrast to each other.

* Gibbon's *Memoirs of his own Life and Writings*, p. 213, 8vo.—The private history of that period has been illustrated by P. E. Müller, a very learned and able professor in the university of Copenhagen. See his *Commentatio Historica de Genio, Moribus et Luxu Ævi Theodosiani*. Part. i. Havniæ, 1797, 8vo. Part. ii. Gættingæ, 1798, 8vo. Dr. Müller has subsequently directed his attention to other studies, and has distinguished himself as the author of various works on northern antiquities, particularly by a copious and elaborate account of the Sagas, which is published in Danish under the title of *Sagabibliothek, med Anmærknin-ger og indledende Afhandlinger*. Kiöbenhavn, 1817-20, 3 Bind. 8vo.

code. “Nothing,” says a French writer, “is more proper to form the mind and manners, than the study of the Roman law. Every one who is of any considerable rank in life, ought to have perused with attention, once at least, the Institutes and the Code of Justinian^y.” Dr. Jortin subjoins, “I am of the same opinion; and I add to these the Theodosian Code, for the light which it gives to ecclesiastical history^z.”

On the utility of this study to the professional lawyer, it may seem unnecessary to dilate. The law of Scotland has derived so many of its maxims and principles from the civil law, that

^y Vigneul-Marville, *Mélanges d'Histoire et de Littérature*, tom. ii. p. 51.

^z Jortin's Tracts, vol. i. p. 437. Lond. 1790, 2 vols. 8vo.—Dr. Jortin has on various occasions evinced his own familiarity with the civil law. See, for example, his *Discourses concerning the Truth of the Christian Religion*, p. 55, 150, 177. *Lond. 1752, 8vo. The following quotation, which relates to Dr. Dickens, professor of the civil law at Cambridge, likewise serves to evince that a knowledge of this science may sometimes be useful to a divine: “His determinations upon some of the questions that came before him were so excellent, that they were much attended to and admired; and an eminent divine has been heard to declare more than once, there were some passages in St. Paul's epistles he could not comprehend, till he heard them explained by him, in the most satisfactory manner, from the Roman laws.” (*Masters's Memoirs of Thomas Baker*, p. 110. Camb. 1784, 8vo.)

the study of the one is justly regarded as the best introduction to the study of the other; and no person can indeed be admitted a member of the Faculty of Advocates without undergoing a previous examination in the civil as well as the municipal law. Till a recent period, the candidates were only examined in the former branch of study^a. It may safely be affirmed that without a competent acquaintance with the civil law, no man can attain to a complete knowledge of the law of Scotland. “Although,” says a late professor of the municipal law, “we have thus collected and adopted a

^a The following passage occurs in the *Answers for the Dean and Faculty of Advocates, to the Petition of Mr. Patrick Haldane, Advocate*. “Your lordships very well know that the sole trial in order to admission as an advocate, is upon the Roman law; and that gentlemen of this nation intending to qualify themselves to be advocates, confine their studies chiefly to that law, so that till within these very few years, gentlemen always studied in foreign universities, and having laid up a reasonable stock of the civil law, were admitted advocates without knowing one title of the municipal laws of their own country; which laid them under a necessity of commencing students of our own law after they were admitted advocates, and tied them to attendance at your lordships bar, the best place in the world for seeing rules illustrated by examples in practice.” This paper, which is dated in 1722, relates to the admission of Haldane as a judge; and is signed by a committee of five advocates, one of whom is Duncan Forbes.

law of our own, which is partly written, partly consuetudinary, yet as in the infinite variety of cases which daily emerge, some questions will often occur which by no rule in our law can well be decided, our judges therefore have recourse to the civil law, and are thereby so far governed, as they find the rule of decision therein set forth, nowise disconform and inconsistent with our own law and practick: and therein the judges are well justified by several acts of parliament, whereby it is declared, that the lieges shall be governed by the king's own laws (that is, our own peculiar laws and customs) and by the common laws of the realm (that is, the civil law); so that we consider the Roman laws, which are not disconform to our own fixed laws and customs, to be our law. For in the reign of James V. we find the king's advocate commencing an action of forfeiture against an heir, for the high treason of his father, on no other foundation but the civil law; which though murmured against by the generality of the nation as a novelty, was yet justified by the parliament as legal; and for no

other reason but because it was agreeable to the Roman law^b. And in king James VI. his time, we find the legislature, in the abrogating of some former laws, thought it necessary to give a *non obstante* to the civil law, as well as to our own particular laws and constitutions. From all which it manifestly appears that the civil law has all along been considered as our law, and is justly made the rule of judgment in all cases wherein our law is silent, and when such decisions will prove nowise derogatory to our own proper laws and customs^c.”

^b 6 Jac. V. c. 69. Acts of the Parliaments of Scotland, vol. ii. p. 356. “Howbeit the commoun law directly providis the samin.”—In reference to this act, Sir George Mackenzie has remarked, “that the common or civil law is a sufficient warrant to sustain actions in this kingdom, because of its great equity, except where the same is over-ruled by a contrary law or custom.” (*Observations on the Acts of Parliament*, p. 136. Edinb. 1687, fol.) By the *common law* our earlier writers generally mean the civil law; and the term continued to bear this signification till a recent period. See the *Information* subscribed by Robert Dundas, in the *Trial of Carnegie of Finhaven, in the year 1728, for the Murder of the Earl of Strathmore*, p. 39, 52. *Edinb. 1762, 8vo. He undertakes to prove that killing in such circumstances “was not capital by the common law, which we in great measure follow in matters of that kind.”

^c Bayne’s Discourse on the Rise and Progress of the Law of Scotland, p. 166, subjoined to Sir Thomas Hope’s Minor Practicks. Edinb. 1726, 8vo.—See likewise Cragii Jus Feudale, lib. i. dieg. ii. § 14. Mackenzie’s Institutions of the Law of Scotland, b. i. tit. i. § 7. Bankton’s Institute of the Laws of Scotland, b. i. tit. i. and Erskine’s Institute of the Law of Scotland, b. i. tit. i. § 41.

The opinion of Lord Stair has been considered as less favourable to the authority of the civil law : he remarks that it is not acknowledged as a law binding for its authority, but, as a rule, is followed for its equity^d. This opinion seems to be expressed with a higher degree of precision. It is evident that the civil law of the Romans, considered as an entire system of jurisprudence, has never been fully received by any nation of modern Europe : many parts of it, as, for example, whatever relates to the power of the father and to the condition of slaves, are utterly inapplicable to modern manners ; and such portions of it as have been adopted in those countries where it has even the greatest influence, are for the most part modified by the peculiar habits or circumstances of the people. The civil law is not in any proper sense the law of the land in Holland, Germany, or Scotland ; but in each of those countries it is the source from which almost all their municipal laws, not of a feudal origin, have manifestly been drawn. Whatever is gradually

^d Stair's Institutions of the Law of Scotland, b. i. tit. i. § 12.

admitted by the courts, or is formally acknowledged by the legislature, becomes a part of the law of the land^e.

Notwithstanding its importance as a branch of professional study, the civil law has been too much neglected in the Scottish universities. Sir Thomas Craig, who died in the year 1608, expresses his regret that in his time there were no professors by whom it was publicly taught^f; nor can we easily suppose him to have been mistaken in the statement of such a fact. In relation to this subject, a late writer seems too rashly to have charged him with ignorance^g. To prove that professorships have been found-

^e “All the strength that either the papal or imperial laws have obtained in this kingdom, is only because they have been received and admitted either by the consent of parliament, and so are part of the statute laws of the kingdom, or else by immemorial usage and custom in some particular cases and courts, and no otherwise, and therefore so far as such laws are received and allowed here, so far they obtain and no further; and the authority and force they have here is not founded on, or derived from themselves; for so they bind no more with us than our laws bind in Rome or Italy.” (Hale’s *Hist. of the Common Law of England*, p. 27.)

^f “In plerisque negotiis jus civile sequimur, non quidem edocti, et in eo instituti, quod nulli adhuc quod sciam apud nos juris fuerint professores qui jus publice docerent, quod sane dolendum est.” (Cragii *Jus Feudale*, p. 14. *Edinb. 1732, fol.)

^g Ross’s *Lectures on the Law of Scotland*, vol. ii. p. 9. Edinb. 1792, 2 vols. 4to.

ed, does not prove that lectures have been read by the professors: it is well known that there are professorships of the civil law at Oxford and Aberdeen, but when did Dr. Phillimore or Dr. Dauney read a lecture on the civil law? In the university of Edinburgh there were no law lectures till many years after the death of Craig. The law professorship at St. Andrews was suppressed by the visitors appointed in the year 1597: the last professor was William Wellwood, a man of learning, and the author of several works^h. The only British universities in which public lectures on the civil law continue to be annually read, are those of Edinburgh and Cambridgeⁱ.

Although the law of England is not so extensively indebted to the same source^k, its obli-

^h M'Crie's *Life of Melville*, vol. ii. p. 119, 319-21.

ⁱ Dr. Geldart, professor of the civil law in the university of Cambridge, delivers his course of lectures at Trinity Hall in three successive terms; and the text-book which he uses is Hallifax's *Analysis of the Civil Law*. In the year 1768, it was enacted by the senate that no candidate should be admitted to the degree of LL. B. without producing a certificate of his having attended the professor's lectures for three terms. It is to be hoped that a similar arrangement will at length take place in the university of Oxford, where many improvements have recently been introduced.

^k Duck de *Auctoritate Juris Civilis*, lib. ii. cap. viii. Seldeni *Dissertatio ad Fletam*, cap. ix. St. Amand's *Hist. Essay on the Legislative*

gations are yet more considerable than is commonly supposed. "With all its imperfections," says Sir William Jones in allusion to the Pandects, "it is a most valuable mine of judicial knowledge, it gives law at this hour to the greatest part of Europe, and, though few English lawyers dare make such an acknowledgment, it is the true source of nearly all our English laws that are not of a feudal origin¹." The statute law, for example, respecting the disposition of the estates of intestates is founded on the hundred and eighteenth Novel of Justinian; and from this circumstance I shall endeavour to illustrate the importance of an intimate know-

Power of England, p. 46. Lond. 1725, 8vo. Barrington's Observations on the Statutes, p. 76, 3d edit.—The fate of the civil law in England is very ingeniously discussed by Bishop Hurd, *Dialogues Moral and Political*, vol. ii. p. 171.

¹ See Lord Teignmouth's Memoirs of Sir William Jones, vol. ii. p. 168.—"Upon a review," says Dr. Wood, "I think it may be maintained, that a great part of the civil law is part of the law of England, and interwoven with it throughout." (*Institute of the Civil Law*, p. xi.) Another civilian has expressed himself in more decided terms. "Eadem utriusque fundamenta, easdem rerum definitiones divisionesque, consentaneas plane regulas, similia fere scita, sola idiomatis atque methodi varietate disparata, animadverti; et legem nostram communem (quam dicimus) nihil aliud esse quam Romani et feudalis mistionem." (Cowelli *Institutiones Juris Anglicani*, epist. ded.) See likewise Dr. Bever's *Discourse on the Study of Jurisprudence and the Civil Law*, p. 25, 31.

ledge of the civil law, even to the English lawyer.

Voet has attempted to prove that by the civil law the brother of an intestate excluded the grandfather^m; and since the publication of his commentary on the Pandects, the same principle has been recognised in the law of England. This question was thrice discussed in the English courts during the last century: the latest decision was in the case of Evelyn versus Evelyn, pronounced in the year 1754 by the lord chancellor Hardwicke, who decreed in favour of the brother to the exclusion of the grandfather. "It was declared to be the opinion of the court," says Dr. Harris, "that, if the point in question had been *res integra*, and solely determinable by the Roman law, the decree would still have been the same; which declaration, from so high an authority, must have great weight in ascertaining the meaning of the Novel, and must incline civilians in general to think more favourably for the future of Voet's arguments, which were particularly quoted and

^m Voet, Commentarius ad Pandectas, tom. ii, p. 588.

much relied upon by the courtⁿ." With great deference to so high an authority, I will venture to assert that the opinion adopted by the lord chancellor is completely erroneous; and, without taking notice of all the arguments advanced on the occasion, it may be possible to evince that this assertion is not lightly hazarded. It is proper to add that the interpretation of the Dutch professor and the English chancellor is likewise adopted by Dr. Hallifax, professor of the civil law at Cambridge, and afterwards successively bishop of Gloucester and St. Asaph^o. But the reasoning of Voet proceeds upon very fallacious grounds. If it is true, he remarks, that brothers and sisters so concurred with ascendants in the nearest degree that the estate was to be equally divided according to the number of individuals, it would necessarily happen that the nearer ascendants were less injurious to the brothers and sisters than the more remote; for if we suppose the deceased to have left two full brothers, his father and mother

ⁿ Justinian's Institutions, translated by Harris, p. 367.—See Dr. Burn's Ecclesiastical Law, vol. iv. p. 417, 6th edit.

^o Hallifax's Analysis of the Civil Law, p. 53.—See likewise Dr. Browne's View of the Civil Law, vol. i. p. 226.

would only take two equal parts of the inheritance, and each of the brothers a fourth part; but if both his grandfathers and grandmothers survived, each of the brothers would only be entitled to a sixth part; and if they were admitted along with great-grandfathers and great-grandmothers to the number of eight, each would in that case be entitled to only a tenth part. The learned commentator evidently supposes a case of very rare occurrence: when could an estate ascend to eight different ancestors in the same degree of proximity? From what we know of the ordinary course of human life, we may be well assured that it could rarely, very rarely, ascend to four; for the parents of the intestate must be previously dead, and both his grandfathers and grandmothers must survive. But, in the other case, not only his parents, but likewise both his grandfathers and grandmothers must be previously dead;—and who then must survive? The fathers and mothers of his paternal grandfather and grandmother, and the fathers and mothers of his maternal grandfather and grandmother. I will venture to affirm that such a case has but seldom

occurred in the history of mankind at any period subsequent to the general deluge: if it did occur, it might with peculiar emphasis be termed *hereditas luctuosa*. Whether we ought to ascribe much importance to the suggestion of such a case as this, it is not very difficult to determine. Voet supposes his doctrine to be sufficiently established by the words of the Novel; for, as he avers, it is clearly provided that if full brothers and sisters survive, “eos cum proximis gradu ascendentibus vocari, si aut pater aut mater fuerint.” Whatever colour this notion may derive from such a translation, every doubt must vanish when we consult the Greek text; where it is very unequivocally stated that if full brothers or sisters are found along with ascendants, they shall be called to the inheritance with those who are nearest in degree, even if such ascendants should be a father and mother. Brothers and sisters are called to the succession along with ascendants, *εἰ καὶ*, although those ascendants should be a father and mother; they are called to the succession with ascendants of every degree, and are not even exclud-

ed by those who stand in the first degree, that is, by parents^p.

To this illustration many others might easily be added. There is one English court, which presents the most ample prospects of honour and emolument, and in which a competent knowledge of the civil law is confessedly of no small importance to the judges and practition-

^p Εἰ δὲ μετὰ τῶν ἀνιόντων εὐρεθῶσιν ἀδελφοὶ ἢ ἀδελφαὶ ἐξ ἑκατέρων γονέων υναπτόμενοι τῷ τελευτήσαντι, μετὰ τῶν ἐγγυτέρων τῷ βαθμῷ ἀνιόντων κληθήσονται, εἰ καὶ πατὴρ ἢ μήτηρ εἴησαν. (Novell. cxviii. cap. ii. p. 469. edit. Spangenberg.) “Si vero cum ascendentibus inveniantur fratres aut sorores ex utrisque parentibus conjuncti defuncto, cum proximis gradu ascendentibus vocabuntur, *si et pater aut mater fuerint.*” The last clause is more properly translated by Hombergk, “*licet pater aut mater sint.*” But the quotation of Voet, “*si aut pater aut mater fuerint,*” is neither warranted by the Greek text nor by the common version; and Lord Hardwicke was well entitled to remark that “it is not fair in him to alter the words of the Novel, on purpose to favour his own interpretation.”

It may not here be improper to add that, in reference to the subject of intestacy, another eminent civilian has fallen into a material error. Heineccius avers that the children of deceased brothers and sisters, if no brother or sister survives, are excluded by ascendants; but the modern practice, he subjoins, has generally departed from this rule. (*Elementa Juris Civilis sec. ord. Institut. § 755.*) This statement is however very inaccurate. It is indeed provided by Novel. cxviii. cap. iii. that when ascendants are called to the inheritance, they exclude the children of a deceased brother or sister; but this law was afterwards amended by Novel. cxxvii. cap. i. It is worthy of remark that Heineccius quotes the authority of the latter constitution; and I am inclined to believe that he must only have inspected the preamble, which recapitulates the law to be repealed.

ers. The forms of administering justice in the court of chancery are in a great measure derived from the Roman jurisprudence. The chancellors were for many ages dignified ecclesiastics, eminent for their skill in the civil and canon laws; and their assistants, the masters in chancery, were, till a much later period, doctors in the same faculties^a. “And (to speak with all due deference) if the other practitioners in this honorable and important seat of justice would sometimes condescend to look back upon the real sources of their proceedings, and correct some of their redundancies by the first principles of their profession, the civil law would not appear in a less favorable light, nor would the suitors be more burdened with delay and expence. One principal object of this court arises from testamentary causes; in which it has in many instances an exclusive jurisdiction, in others, a concurrent one with the ecclesiastical courts. But as devises of lands were little known in the English constitution till the sta-

^a “The sixe masters,” says Sir Thomas Smith, “are assistants to the court, to shew what is the equitie of the ciuill law, and what is conscience.” (*Commonwealth of England*, p. 121. *Lond. 1633, 12mo.)

tutes of wills in the reign of Henry VIII. the professors of the common law were very poorly provided with rules for determining such disputes as then began daily to arise, and to open an intire new scene of very lucrative business. The right of testation however being very free and unlimited in the Roman republic, they gladly resorted to that rich magazine of good sense; from whence they have imported very large and valuable materials, wherewith they have enlivened their more modern juridical writings; and have thereby much improved the system of public justice. Here therefore the civil law speaks with good effect, where the common law is silent or deficient; and deserves to be studied with great care and precision. And the same may be said of several other objects of this high jurisdiction^r.”—Are we not therefore entitled to affirm that to the English

^r Bever's Discourse on the Study of Jurisprudence and the Civil Law, p. 30. Oxford, 1766, 4to.—“In more modern times,” says the late Vinerian professor, “since the business of the chancery has become so diffusive, the advocates and judges in that court have frequently and unreservedly resorted for arguments and illustrations both to the text and comment of the Roman civil law.” (Woodeson's *Elements of Jurisprudence*, p. 86. Lond. 1783, 4to.)

lawyer a knowledge of the civil law is by no means a superfluous acquisition? Two of the most eminent lawyers of that nation have borne ample testimony to the advantages which their brethren may derive from an acquaintance with the writings of the civilians.

Sir Matthew Hale, says Bishop Burnet, “set himself much to the study of the Roman law, and though he liked the way of judicature in England by juries, much better than that of the civil law, where so much was trusted to the judge^s, yet he often said, that the true grounds and reasons of law were so well delivered in the Digests, that a man could never understand law as a science so well as by seeking it there, and therefore lamented much that it was so little studied in England^t.”

Sir William Blackstone, though most anxious to recommend the academical study of the English law, speaks thus of a rival branch : “Far be it from me to derogate from the study of the civil law, considered apart from any bind-

^s Dr. Pettingal published “An Enquiry into the Use and Practice of Juries among the Greeks and Romans.” Lond. 1769, 4to.

^t Burnet’s Life of Sir Matthew Hale, p. 15. Lond. 1682, 8vo.

ing authority as a collection of written reason. No man is more thoroughly persuaded of the general excellence of its rules, and the usual equity of its decisions, nor is better convinced of its use as well as ornament to the scholar, the divine, the statesman, and even the common lawyer^u."

To the testimony of these very able professors of the common law, I beg leave to add that of an English civilian who flourished during the reign of James the first. The civil law, says Sir Thomas Ridley, "is for the great wisdom and equitie therof, at this day, as it were, the common law of all well governed nations, a very few onely excepted. And certainly, albeit sundry other nations by the light of nature have many rules and maximes in the civile law, yet if all the constitutions, customes, and lawes, of all other people and countries were put together (I except none, save the lawes of the Hebrews, which came immediatly from God) they are not comparable to the law of the Romans, neither in wisdom nor equitie, neither

^u Blackstone's Commentaries, vol. i. p. 5.

in gravitie nor in sufficiency. Whereupon it is, that most of other nations (saving our owne) although they receive not the civile law wholly for their law, yet they so much admire the equitie thereof, that they interpret their owne lawes thereby^w.”

The principles indeed of the Roman law have, in the most direct manner, influenced the legislation of almost every nation of modern Europe. This influence has even extended to the Ottoman empire. “In the ordinary distribution of justice,” says a learned traveller, “there is in this, as in all other Turkish governments, an officer whom they call the kaddy, who, for the most part, has been educated in the seminaries of Stamboule or Grand Cairo, where the Roman Code and Pandects, translated into the Arabic language, are taught and explained as in the universities of Europe^x.”

Notwithstanding the inducements and advantages which have already been enumerated,

^w Ridley's *View of the Civile and Ecclesiasticall Law*, p. 3. 2d edit. Oxford, 1634, 4to.—Many similar encomiums occur in Sir Robert Wiseman's “*Law of Laws: or, the Excellency of the Civil Law above all other Humane Laws whatsoever.*” Lond. 1686, 8vo.

^x Dr. Shaw's *Travels*, vol. i. p. 454. *Edinb. 1808, 2 vols. 8vo.

the study of the civil law is too generally neglected ; and several British writers of very extensive information have betrayed great ignorance, not only of its principles, but even of the mere outlines of its history. This assertion it may not be improper to confirm by particular examples. With this view, I shall have recourse to the writings of three authors of no mean talents ; two of whom were bred to the profession of the law, and the third is “*juris utriusque doctor*”^y.

Mr. Roscoe shall supply us with the first example : “The system of jurisprudence which in the fifteenth century prevailed throughout the greatest part of Europe, was that of the Roman or civil law, which was principally founded on the Pandects or constitutions of Justinian^z.”—From these expressions it may be inferred, that

^y The following curious epitaph is quoted in Lord Orrery’s *Letters from Italy*, p. 174. Lond. 1773, 8vo. “Jo. Martinus Mairacca, *I. V. Doctor et Eques*, nolens discretioni hæredum stare, vivus posuit.” His lordship’s editor, the Rev. John Duncombe, A. M. apparently supposes the initials J. V. to denote “*justus vir*,” instead of “*juris utriusque* ;” for his translation runs thus : “an honest man, doctor and knight.”

^z Roscoe’s *Life of Lorenzo de’ Medici*, vol. ii. p. 93.—The elegant Fabroni, alluding to a plan of translating his *Vita Laurentii Medicei*, expresses himself in the following terms : “*Quod consilium quoque*

this very elegant and accomplished writer was not aware of the existence of the Code, not to mention the other books which contribute to form the body of the Justinian law. Nor is it easy to discover how the Pandects answer to the description of the "constitutions of Justinian." The fifty books of the Digest or Pandects chiefly consist of a methodical abstract of the opinions and decisions of some of the most eminent lawyers, which was executed under the auspices of the emperor Justinian, and derived the force of law from his sanction^a.

Mr. Pinkerton expresses himself in the following terms: "There is an originality in the Greek writers which forms and nurtures genius; the Latin only foster imitation. A divine,

fuisse hominis Britanni audivi, ad quod abjiciendum fortasse valere, quæ de eodem Laurentio historiæ monumentis mandavit ex illa ipsa natione doctus vir Guilelmus Roscoe, cujus opus sermonis elegantia, et rerum, quæ ad litterariam historiam sæculi XV. pertinent, copia maxime omnium judicio commendatur." (*Vitæ Italarum Doctrina excellentium*, vol. xx. p. 46.)

^a A work which reflects at least a glimmering light on the age of Justinian, has lately been rescued from oblivion. It is published under the following title: "Joannis Laurentii Lydi Philadelpheni de Magistratibus Reipublicæ Romanæ libri tres, nunc primum in lucem editi, et Versione, Notis Indicibusque aucti a J. D. Fuss. Præfatus est C. B. Hase." Paris. 1812, 8vo.

or a physician, ought to be grounded in Greek. A lawyer requires Latin, for there is not one Greek writer on law^b.”—This last assertion might seem to have been unwarily hazarded; but it remains uncorrected in the late edition of his singular work. There is one law book written in Greek, and consisting of seven folio volumes; namely the *Basilica*, compiled about the year 900 by the emperor Basilius the Macedonian and his son Leo the Philosopher, and afterwards revised by his grandson Constantinus Porphyrogenneta^c. The Novels, or new constitutions of Justinian and other emperors, are written in the same language; and they have been edited by Mr. Pinkerton’s learned countryman Henry Scrimger, professor of the civil law at Geneva^d. There is besides a Greek paraphrase of the Institutes by Theophilus;

^b Pinkerton’s Enquiry into the History of Scotland, vol. i. p. xii. Lond. 1789, 2 vols. 8vo.

^c Heineccii Hist. Juris Civilis, p. 533. Assemani Bibliotheca Juris Orientalis, tom. ii. p. 312. Suaresii Notitia Basilicorum, p. 46. Fabricii Bibliotheca Græca, vol. xii. p. 467.

^d Hauboldi Institutiones Juris Romani Litterariæ, tom. i. p. 94. M’Crie’s Life of Melville, vol. i. p. 39. 421. Memoirs of Buchanan, p. 185.—It is stated by Dr. M’Crie that by the recommendation of Amiot, then professor of Greek at Bourges, “he became tutor to the children of Secretary Boucherel.” The following letter, addressed *A la Roynce*

who is supposed to have been the same “vir illustris et antecessor” that was associated with Tribonian and Dorotheus in the composition of the original work. Not to enumerate the different tracts published by Leunclavius and others, together with many more which still continue in manuscript, I shall only add that there is a *Πρόχειρον Νόμων*, consisting of six books, and written by Constantinus Harmeno-

d'Escosse, reflects some additional light on this part of Scrimger's history. The original is preserved in the Advocates Library, together with other letters addressed to Mary of Guise.

Madame, Pour ce que j'ay trouvé Maistre Henry Scrimger, present porteur, homme de honneste vie, de vertu, et de grant savoir, tant en lettres Grecques que Latines, je luy ay bailli charge de mes enffans puis troys ou quatre ans ença ; enquoy il fust tellement employé que j'ay occasion, Madame, de m'en louer et grandement contenter. Et dautant, Madame, qu'il est de nation Escossoise, et qu'il m'a pryé luy permettre aller quelque temps par-dela pour donner ordre à aucuns affaires de sa maison, j'ay pris la hardiesse, Madame, de l'accompagner de ceste lettre, et tres humblement vous supplier qu'il vous plaise avoir luy et sa maison en votre bonne protection et recommandation : enquoy faisant, Madame, avecques tant d'autres biens et graces qu'il vous a pleu me faire, j'en demeureray de plus en plus tres obligé, et tenu à vous faire tres humble service.

Madame, me recommandant tres humblement à votre bonne grace, je prieray notre Seigneur vous donner, en parfaicte sancté, tres bonne et longue vye. Escript de la Muette, ce xvi^{me} de Fevrier.

Votre tres humble et tres obéissant

serviteur,

BOCHEREL.

pulus, a judge of Thessalonica. Of this work the very learned Ruhnkenius entertained so favourable an opinion, that he had formed the plan of publishing a new edition^e.

Dr. Thomson speaks of the *Corpus Juris Civilis*, the Code, and the Pandects, as one and the same book. He informs us that Cunningham, the celebrated editor of Horace and antagonist of Dr. Bentley, was solicited to “publish an accurate edition of Justinian’s *Corpus Juris* :” in reference to the same project, he afterwards speaks of the “intended publication of Justinian’s Code ;” and again, of the “intended edition of Justinian’s Pandect^f.” It is sufficiently evident that he supposes all these three appellations to be applicable to the same work.

^e Bachii Hist. Jurisprudentiæ Romanæ, p. 686.—An edition of Harmenopulus was afterwards undertaken by Reitz ; and it was inserted in the supplementary volume of Meerman’s Thesaurus.

^f See Dr. Thomson’s Introd. to Cunningham’s Hist. of Great Britain. Lond. 1787, 2 vols. 4to.—“Renunciantur indies,” says Otto, “utriusque juris doctores, quorum plerique in jure canonico adeo hospites sunt et peregrini, ut ne prima ejus principia degustaverint, nec omnino quid sit jus illud, quod profitentur - -intelligere videantur.” (*Papinianus*, p. 175. Lugd. Bat. 1718, 8vo.) Might we not very safely subjoin, *et in jure civili* ? With respect to juridical knowledge, Dr. Thomson may be described in the words of Lyndewode as “inter utriusque juris doctores minimus.”

Should any one be induced to enter upon this study without the aid of a preceptor, I venture, though with considerable hesitation, to recommend some method similar to the following. I would first of all advise a careful perusal of the long and elaborate chapter which Gibbon has devoted to the discussion of the Roman jurisprudence^s. His notions perhaps are sometimes obscured by the usual faults of

^s Gibbon's Hist. of the Roman Empire, vol. viii. p. 1.—“The chapter,” says Mr. Whitaker, “is long and tiresome, from the ample nature of the subject, and from the necessary dryness of the disquisition. Yet it has much learning, much good sense, and more parade of both. But nothing can subdue the native barrenness of such a field as this.” (*Gibbon's History Reviewed*, p. 52. Lond. 1791, 8vo.) But the rector of Ruan-Lanyhorne was no oracle of the civil law; and our answer shall briefly be, in the words of Menander,

Οὐκ ἔστ' ἀνοίας οὐδὲν πολυηρώτερον.

Dr. Warnkoenig, a distinguished professor of the civil law in the university of Liege, mentions this chapter in the following terms: “Interea Britannicus auctor Gibbon in immortalis opere quod de lapsu et interitu imperii Romani scripsit, cum de Justiniano tractaret, elegantissime in cap. 44. operis sui Romani juris historiam composuit, nova ratione tum fontium juris historiam tum singulorum institutorum mira sagacitate illustrans.” (*Institutiones Juris Romani Privati*, p. 319. Leodii, 1819, 8vo.) Professor Du Caurroy has expressed a more unfavourable opinion, and has pointed out several inaccuracies in this part of Gibbon's work, with which however he seems to be only acquainted in the French translation. (*Thémis*, tom. ii. p. 485.) It is, I think, sufficiently evident that the learned professor has not duly appreciated his rapid and masterly sketch, to which it would not perhaps be easy to find a parallel in the writings of the professed civilians.

his diction; but upon the whole he has exhibited an admirable view of the subject. It may be mentioned as a strong presumption of its intrinsic value, that this chapter has been translated into German, and published in a separate form by Professor Hugo^b. A general and even philosophical idea being derived from this source, it may next be expedient to have recourse to some compendious work which treats of the civil law in the order of Justinian's Institutes. That of Perezius, arranged in the form of question and answer, is commended by Gravina; but the more recent work of Heinecius is in many respects preferable not only to this, but perhaps to every other publication of the same denomination. The author displays much judgment as well as learning, and his reasoning makes a near approach to mathematical precisionⁱ. It may indeed be granted that his

^b Eduard Gibbon's *historische Uebersicht des Römischen Rechts*; aus dem Englischen übersetzt und mit Anmerkungen begleitet vom Professor Hugo. Göttingen, 1789, 8vo.—This famous chapter has been illustrated, though not translated, by another eminent civilian. “*Précis de l'Histoire du Droit Romain, par E. Gibbon. Revu, rectifié et augmenté de notes, par L. A. Warnkoenig.*” Liège, 1821, 8vo.

ⁱ “Cada qual de estos miembros,” say the authors of another elementary work, “se trata alli en particular con orden y método geometrico,

method is sufficiently scholastic, and that he occasionally employs a technical phraseology, not derived from the ancient lawyers, but devised by the modern commentators: nor is this practice merely objectionable in point of taste; it is apt to produce erroneous impressions, and has therefore been scrupulously avoided by Hugo, Warnkoenig, and other recent writers. It is the peculiar merit of this work of Heineccius, that it compresses much information within a moderate compass, and exhibits that information in a very clear and intelligible manner^k. The student will now be prepared for the per-

el qual nos ha parecido unico para hacer perceptibles los principios de nuestra jurisprudencia, y desengañar á los que han pretendido hacer á esta ciencia incapáz de demostracion mathematica." (*Instituciones del Derecho Civil de Castilla*, por los Doctores Don Ignacio Jordán de Asso y del Rio, y Don Miguél de Manuél y Rodriguez. Madrid, 1771, 4to.)

^k The labours of Heineccius were not confined to the civil law. Among other books, he published *Fundamenta Styli Cultioris*; which were improved by Gesner, and continued to be held in considerable estimation till superseded by the more complete and useful work of Scheller, entitled *Præcepta Styli bene Latini*, of which the third edition was published at Leipzig in 1797 in 2 vols. 8vo. Heineccius, who taught others the art of writing Latin, is not himself very nice or scrupulous in his language. He even ventures to use such expressions as these: "si professor dicat, *collegium prælegam pro honorario*." (*Recitationes in Elementa Juris Civilis*, p. 423. *Leovard. 1773, 8vo.) In order to understand this barbarous phraseology, it is necessary to recollect that in German, "ein Collegium lesen," signifies to read a course of lectures.

usal of the Institutes themselves; the work compiled under the auspices of Justinian, as the standard introduction to the study of the Roman law. "This little work," says Dr. Bever, "is so truly admirable, both for its method and conciseness, as well as for the elegance of its composition, that it has been imitated by almost every nation in Europe, that hath ever made any attempt to reduce its own laws to a regular and scientific form¹."

The Institutes of Justinian are professedly compiled from more ancient books of the same nature, and particularly from the Institutes of Caius^m, an illustrious lawyer who flourished about the age of Antoninusⁿ. An unskilful epitome of this latter production has long been known: but the genuine work of Caius, after having for many centuries been considered as

¹ Bever's Hist. of the Legal Polity of the Roman State, p. 480.

^m "Ex omnibus antiquorum Institutionibus, et præcipue ex commentariis Caii nostri, tam Institutionum quam Rerum Quotidianarum, aliisque multis commentariis compositas." (*Institut.* pro. § 6.)

ⁿ "Sed hodie ex divi Pii Antonini constitutione hoc magis jure uti videbimur." (*Caii Institutiones*, lib. ii. § 195.) "Nuper Imperator Antoninus significavit rescripto suo." (*Ibid.* § 126.) From the first of these passages it appears that the emperor was then dead, and from the second, that he had died a short time before.

irretrievably lost, was at length discovered in the cathedral library of Verona; and its recent publication forms a new era in the study of jurisprudence°. The manuscript is not without

° In the year 1816, Niebuhr discovered in the library of Verona a juridical MS. of great antiquity: from this he extracted a short specimen, and transmitted it to his friend Savigny, who speedily discovered that it formed a part of the genuine Institutes of Caius. Such a discovery excited the highest curiosity and interest throughout Germany; and during the following year, the Royal Academy of Berlin dispatched to Verona two of its distinguished members, Professor Göschen, a civilian, and Professor Bekker, a philologist, charged with the commission of executing a transcript of this precious MS. They were afterwards joined by Dr. Hollweg, a young civilian of great promise, who has since been appointed a professor in the university of Berlin: he was a volunteer in this important service, and to his indefatigable exertions they were greatly indebted. The task of deciphering the MS. was of a very appalling nature; it is a *codex rescriptus*, and to a considerable extent *bis rescriptus*. The original writing consists of the text of Caius, which is superinduced by some of the works of St. Jerom. Without the aid of a chemical process, it would have been impossible to succeed in the attempt to read what had thus been written and erased. (Abhandlungen der historisch-philologischen Klasse der Königlich-Preussischen Akademie der Wissenschaften aus den Jahren 1816-1817, S. 307. Berlin, 1819, 4to. *Thémis, ou Bibliothèque du Jurisconsulte*, tom. i. p. 287. Goescheni præf. in *Gaium*.) According to the opinion of Kopp, the learned author of the *Palæographia Critica*, who is allowed to possess great knowledge of ancient monuments, the MS. of Caius must have been written before Justinian's reformation of the law. (Zeitschrift für geschichtliche Rechtswissenschaft, herausgegeben von Savigny, Eichhorn und Göschen, Band iv. S. 480.)

These Institutes have at length been published with admirable care and skill by Professor Göschen, now of the university of Göttingen. "Gaii Institutionum commentarii IV. e Codice rescripto Bibliothecæ Capitularis Veronensis auspiciis Regiæ Scientiarum Academiæ Borussicæ nunc primum editi. Accedit Fragmentum veteris Jurisconsulti de Jure

frequent mutilations, and the task of deciphering it was attended with difficulties which could only be surmounted by the skill and perseverance of several very able and learned individuals. Even in this less perfect state, the Institutes of Caius are highly valuable, as reflecting a strong light on many important topics of the Roman law ; and the book has accordingly been received by the foreign civilians with a degree of ardour and exultation, not easily conceived by those who are unacquainted with the progress of such studies among some of the continental nations.

The Institutes of Justinian ought at first to

Fisci, ex aliis ejusdem Bibliothecæ Membranis transcriptum. Cum Tabulis æreis. Berolini, apud G. Reimer, 1820, 8vo.—Caius has already been reprinted in France, in a very judicious collection edited by Dr. Jourdan, in concert with Blondeau and Du Caurroy, two professors of the civil law in the university of Paris. The collection is entitled *Juris Civilis Ecloga*. Paris. 1822, 12mo. A third edition, with notes and emendations, is now preparing by Pietro Ruga, professor of the civil law in the Archiginnasio of Rome. (*Giornale Arcadico di Scienze, Lettere, ed Arti*, tom. xiii. p. 14. Roma, 1822, 8vo.) Many obscure points of law have already derived new light from this source ; but the earliest publication indebted to it is the dissertation of Dr. Hollweg *De Causæ Probatione*. Berolini, 1820, 8vo. The fourth book of Caius has been illustrated with much ability by a young civilian of Liege, Everard Dupont, in a work entitled *Disquisitiones in commentarium IV. Institutionum Gaii*. Lugd. Bat. 1822, 8vo.

be read in the edition of Vinnius, whose notes are short, and greatly facilitate the understanding of the text. It will also be expedient on many occasions to consult his copious and learned commentary, which contains an able discussion of almost every material question that will occur. The Greek paraphrase by Theophilus, of which there are several Latin versions, often reflects much light on the original^p. The Antiquities of Heineccius, which follow the order of the Institutes, will likewise form a very valuable accompaniment; and to

^p “Theophilus antiquus satis jureconsultus,” says the very learned archbishop of Tarragona, “Justiniani Institutiones Græce vertit, addiditque quasdam doctas sane antiquitatis interpretationes, quo libro nullus extat ad eos Justiniani libros intelligendos aptior.” (Augustini *Emendationes et Opiniones*, p. 157.) Reitz conjectures, with much probability, that Theophilus had publicly dictated this paraphrase in his capacity of an antecessor and expounder of the law; and that for its preservation we are solely indebted to the uncorrected copies which had been taken by his auditors. See the preface to his elegant and very excellent edition of Theophilus, p. xxvii. The paraphrase contains innumerable barbarisms; which are partly to be ascribed to the necessity of expressing in Greek the technical phrases of the Roman law. We meet with such expressions as these: κομφισσορίως, νεγατορίως, ὀφφικίου, κουράτωρ, περσονάλιαι, πραιουδικιαλίαι, σάγκτα πράγματα, κουάσι κοντράκτον, φαμιλίας ἐρκισκοῦνδαι. Theophilus exhibits various instances of that departure from the quantity of Latin words which is so customary with the Greek writers. Thus *Lentulus* is expressed by Λεντοῦλος, and *decretum* by δέκρετον. These motley examples are quoted from the valuable edition of Fabrotus, Paris, 1638, 4to. They do not all occur in that of Reitz.

these different works must be added that of Brissonius *De Verborum Significatione*, a most elaborate and useful dictionary of the civil law. But the publication of Vicat, though possessing less original merit, is better digested, and therefore better adapted to common use^a.

Those who prefer the most short and easy method, may peruse the Institutes in the English translation of Dr. Harris^r. There is in the same language one very erudite treatise on the civil law, written by Dr. Taylor, the celebrated editor of Demosthenes. This volume exhibits many collateral illustrations, drawn from Greek and Latin philology; but the materials are generally much superior to the arrangement. Ellis's abridgment will be convenient for many readers, as it only contains what strictly belongs to the subject which it professedly treats.

^a A very useful dictionary of the civil and canon law, entitled *Lexicon Juridicum*, was published at Geneva in the year 1599. "Minoris quidem molis, sed discentium usibus adprime adcommodatum est." (Eckhardi *Hermeneutica Juris*, p. 213.)

^r "It has often occurred to the writer," says Mr. Butler, "that for persons designed for parliament or the bar, the interval between studies merely classical and studies practically useful could not be employed better than in the perusal of the Institutes, in the edition of them by Dr. Harris, and the *Syntagma* of Heineccius, as a commentary." (*Reminiscences of Charles Butler*, p. 121. Lond. 1822, 8vo.)

I may here add that to the more learned student of English law, the *Jurisprudentia Philologica* of Dr. Eden, archdeacon of Winchester, may be of some importance: it contains the elements of the civil law according to the method of the Institutes, together with a comparative view of the general principles of English jurisprudence. In executing the latter part of this plan, the author is much indebted to the previous labours of Dr. Cowell^s.

The history of the Roman law may perhaps be considered as the next object of attention; and, after this preliminary course, the student will be better enabled to enter into its spirit. This subject has been treated in a great variety of forms, chiefly by the French and German civilians. It is one manifest advantage

* John Cowell, LL. D. master of Trinity Hall, and professor of the civil law in the university of Cambridge, published a work entitled *Institutiones Juris Anglicani ad Methodum et Seriem Institutionum Imperialis compositæ et digestæ*. Cantab. 1605, 8vo. Another work of the learned author, entitled *The Interpreter, or Book containing the Signification of Words* (Camb. 1607, 4to.) exposed him to the severe animadversion of the house of commons: he was himself committed to custody, and his book was suppressed by the king's proclamation. (*Biographia Britannica*, vol. iv. p. 364.) In England the common lawyers were always jealous of the civilians; and some of Cowell's positions were too favourable to the prerogative of the crown.

which the later civilians possess over most of their predecessors, that they have a more familiar and a more critical knowledge of every branch of historical jurisprudence. In the German and Dutch universities it has long been customary to read lectures on the history of the civil law; and the same practice is now introduced into the university of Paris, where a great school of law has recently been established, and where the study of the Roman jurisprudence seems to be conducted on just and liberal principles^t. Among the most elaborate and satisfactory histories of the civil law we may class those of Hoffmann, Struvius, Brunquellus, Heineccius, Bachius, Hugo, and Berriat St. Prix. The historical part of Gravina's *Origines Juris Civilis* is, like the rest of his

^t Of the mode in which vacancies in the law professorships are there supplied, a very accurate opinion may be formed from the perusal of a work published under the following title: "Relation du Concours ouvert à Paris pour la Chaire de Droit Romain vacante par la Mort de M. Berthelot; par M. A. J. L. Jourdan, Docteur en Droit, Avocat à la Cour Royale de Paris." Paris, 1819, 8vo. Pp. 391. A competition of this nature must preclude any gross attempt at jobbing, and has therefore many advantages. On the present occasion no fewer than nine candidates appeared; and after a very serious trial, adjourned to many different days, the vacant chair was awarded to M. Blondeau.

Latin compositions, ingenious and elegant; he may indeed be characterized as the most elegant of all the more recent civilians^u. It will, in the mean time, be sufficient to form an acquaintance with any one of these writers, and all of them have their peculiar merits. The work of Bachius is in several respects superior to that of Heineccius, and to those of most of the writers already enumerated^w. Hugo's his-

^u Gravina, the early patron of Metastasio, is the author of five Italian tragedies, and of two critical works, entitled *Della Tragedia*, and *Della Ragion Poetica*. The hero of one of his tragedies is the famous lawyer Papinian. Of his treatise on poetry there are at least two separate editions, printed in Italy. Roma, 1708, 4to. Napoli, 1716, 8vo. To the latter edition is subjoined an elegant and ingenious epistle *De Poesi*, addressed to the Marquis Maffei. This is not to be found in the edition lately published by Mr. Mathias; and it seems to have escaped the notice of Mascovius, the editor of Gravina's Latin works. But there is a complete collection of his writings, in Latin as well as Italian, published at Naples by J. A. Sergio, 1756-8, 3 vols. 4to. The epistle likewise occurs in Bishop Burgess's edition of Gravina's *Opuscula*. Oxon. 1792, 8vo. Dr. Warton is of opinion that Blackwell "has taken many observations from this valuable book, particularly in his twelfth section." (*Essay on Pope*, vol. i. p. 136.) He alludes to Dr. Blackwell's *Enquiry into the Life and Writings of Homer*. Lond. 1735, 8vo.—There is a separate account of Gravina, written with a very considerable degree of elegance, and published under the title of "J. Andreæ Serrai de Vita et Scriptis Jani Vincentii Gravinæ Commentarius." Romæ, 1758, 4to. Pp. 104. He has found another elegant biographer in Fabroni. (*Vitæ Italarum Doctrina excellentium*, vol. x. p. 1.)

^w An account of Jo. Augustus Bachius, who died in the year 1758 at the age of thirty-eight, may be found in the collection of Harlesius,

tory of the Roman law, which is written in German, displays much perspicacity and learning^x: the very distinguished author, by this and his other publications, has imparted a new impulse and a new character to the juridical studies of the age. To all his investigations he applies an acute and philosophical mind; and his knowledge of the “jurisprudentia Ante-Justiniana,” or juridical writings which precede the reign of Justinian, has very rarely been equalled. The historical work of Berriat St. Prix likewise reflects credit on the author: it is besides accompanied with the most elaborate and satisfactory life of Cujacius that has yet

De Vitis Philologorum, vol. i. p. 68. vol. iii. p. 182. The author speaks very highly of his learning and talents. See likewise the prolegomena to his *Opuscula*, and Stockmann's preface to *Bachii Carmina*. Dresd. et Lips. 1787, 8vo. “Habebat Ernestus,” says Wyttenbach, “disciplinæ alumnum Bachium, elegantissimæ juvenem doctrinæ, insigne decus jurisprudentiæ, veteres Cujacios et Gothofredos relaturum, nisi longiorem ei vitam fata invidissent.” (*Vita Davidis Ruhnkenii*, p. 47. Lugd. Bat. et Amst. 1799, 8vo.)

^x Hugo's *Lehrbuch der Geschichte des Römischen Rechts bis auf Justinian*. *Berlin, 1822, 8vo.—This work, which now appears in the eighth edition, may either be procured separately, or as the third volume of the author's *Lehrbuch eines civilistischen Cursus*. It has lately been translated into French by Jourdan, not the lawyer, but a doctor of physic; and the translation has been revised by M. Poncelet, lecturer on the history of law in the university of Paris. (*Histoire du Droit Romain*. Paris, 1822, 2 tom. 8vo.)

appeared^y. The history of the Roman law during the middle ages has been traced, with singular ability and research, by an accomplished author who has distinguished himself by several other works, and particularly by a profound treatise on the right of possession^z. This author is F. C. von Savigny, who ranks with Hugo, Haubold, and the other great civilians who adorn the literary annals of Germany. Connected with this branch of our subject, there is another elaborate and valuable book which must not be overlooked; namely, Dr. Duck's treatise on the use and authority of the civil law in the dominions of Christian princes. Those who have not leisure or inclination to peruse larger volumes, will find a very short

^y Supplementary notices of Cujacius, communicated by Savigny and Berriat St. Prix, occur in the *Thémis, ou Bibliothèque du Jurisconsulte*, tom. iv. p. 193, 385. This periodical work, of which the first volume was published at Paris in 1819, I beg leave to recommend to the attention of my readers as containing much ingenious discussion and much interesting information.

^z Das Recht des Besitzes; eine civilistische Abhandlung von Friedrich Carl von Savigny. *Giessen, 1818, 8vo.—An analysis of this work, by Warnkœnig, may be found in the *Thémis*, tom. iii. p. 224, 445. tom. iv. p. 234, and an abstract of the first two volumes of Savigny's *Geschichte des Römischen Rechts im Mittelalter*, by Dr. Meynier, in the *Annales de Législation et de Jurisprudence*, tom. i. p. 70, 181. tom. ii. p. 99. tom. iii. p. 56.

and able sketch of the history of the Roman jurisprudence in the manual of the younger Gothofredus, famous as the editor of the Theodosian Code, and as the author of various juridical works.

The biography of the ancient lawyers is also entitled to our attention; and it has formed a separate object of enquiry with several writers, the most satisfactory of whom are Bertrand and Grotius. Pancirolus and Taisand have given an account of the modern as well as the ancient civilians. The life of the emperor Justinian, whose history is so closely blended with that of the Roman jurisprudence, has been copiously detailed by Ludewig, a very able professor of the civil law^a. The ancient sects of lawyers are separately discussed by Mascovius, and other learned authors^b. Their philosophy has like-

^a Justinian has found a most zealous defender in an English divine of the seventeenth century, Richard Crakanthorp, D. D. whose work bears the title of *Iustinian the Emperor defended, against Cardinal Baronius*. Lond. 1616, 4to.

^b The work of Mascovius is described by his biographer as “*elegantissimus profecto libellus, ex quo qui artificem haud cognoverit, næ is plumbeus est, et stupidior lapide molari.*” (Püttmanni *Memoria Gottfridi Mascovii*, p. 47. Lipsiæ, 1771, 8vo.) The late bishop of Salisbury, who attended his lectures at Leipzig, speaks of him in the following terms. “Mascou has a brother, who is professor of the law of na-

wise afforded considerable room for investigation: Cujacius, the greatest of all the modern civilians, had remarked that they generally incline to the notions of the Stoics^c; and this opinion having been controverted by Gaudentius^d, was afterwards illustrated in separate dissertations by Otto and several other writers^e.

In the university of Edinburgh, as well as in those of Holland and Germany, the study of the Institutes is succeeded by that of the Pandects; and for each course Heineccius has furnished an accurate and judicious text-book. But for a private student, it may perhaps be preferable to have recourse to the general view of the order and contents of the Pandects and Code, exhibited in the excellent manual of

ture and nations; a very singular man, of great learning indeed, but I fear much learning has made him mad. He lives for months without stirring from his lodging; and in the intervals of his lectures amuses himself with translating Latin epigrams into Greek. He is an excellent classical scholar, and a great civilian, especially in the antiquities of the Roman law, but unfortunately he has not a happy talent of communicating his knowledge to others." (Douglas's *Select Works*, p. 35. Salisbury, 1820, 4to.)

^c Cujacii Observationes, lib. xxvi. cap. xl.

^d Gaudentius de Philosophiæ apud Romanos Initio et Progressu, p. 104. Pisis, 1643, 4to.

^e See Eckhardi Hermeneutica Juris, p. 219.

Gothofredus. The *Paratitla* of Cujacius will likewise be useful. It is however to be understood that the text ought always to be within reach, and ought very frequently to be consulted; for without a familiar acquaintance with the original authorities, no man will ever arrive at much proficiency in such studies. The two last titles of the Pandects, “de verborum significatione^f,” and “de diversis regulis juris antiqui,” ought to be perused with particular attention. These titles must always be considered as highly important; and they have both been illustrated in copious and detached commentaries by various writers.

But long before the student shall have proceeded thus far, he will not stand in need of any advice which I am capable of offering. It may only be remarked, in conclusion, that those who wish to obtain a complete knowledge of the laws and customs of Rome, must likewise acquaint themselves with the laws and customs

^f “Quare,” says Van Eck, “facile fidem mihi habebunt studiosi juris, si, id quod res est, dixero, hunc titulum nunquam de manibus esse deponendum, sed nocturna diurnaue cura versandum.” (*Principia Juris Civilis, secundum Ordinem Digestorum*, p. 906. *Traj. ad Rhen. 1697, 8vo.)

of Greece. The two nations were of the same origin and lineage; as indeed a comparative view of the Latin language, which retained so many characteristics of the Æolic dialect, would sufficiently evince in the absence of all historical documents. But, besides this general cause of resemblance, there was another of a more peculiar nature. With a degree of docility which is justly considered as remarkable in a state of such imperfect civilization^s, the Romans sent a solemn embassy to Greece, with

^s See Dr. Dunbar's *Essays on the History of Mankind*, p. 161. Lond. 1780, 8vo.—“ Les Grecs,” says Voltaire, “ fournirent aux Romains la loi des douze Tables. Un peuple qui va chercher des loix et des dieux chez un autre, devait être un peuple petit et barbare; aussi les premiers Romains l'étaient-ils.” (*Philosophie de l' Histoire*, p. 282. Amst. 1765, 8vo.)

Whether such an embassy was ever sent to Greece, has been disputed by several modern writers. See the state of the controversy, in an article written by Berriat St. Prix, *Thémis, ou Bibliothèque du Jurisconsulte*, tom. iv. p. 304. Too much scepticism is however as dangerous as too much credulity: such an occurrence seems to involve nothing improbable, and it is clearly attested by Livy, Dionysius of Halicarnassus, and other ancient authors. Hugo, who is not too much disposed to acquiesce in received opinions, considers the history of this transaction as entitled to credit. (*Geschichte des Römischen Rechts*, S. 64.) “ Nil e Græcia,” says Warnkoenig, “ vel parum adoptatum esse in XII. tabulis, est communis fere Germanorum nunc juris Romani interpretum opinio; quia omnes quæ ad nos pervenere XII. tabularum reliquiæ, Romanæ sive Italicæ originis sunt, neque Græcorum institutorum vestigia continent.” (*Institutiones Juris Romani Privati*, p. 321.)

instructions to examine and collect the laws of that country. “It is perhaps worth while to remark,” says Dr. Smith, “that though the laws of the twelve tables were, many of them, copied from those of some ancient Greek republics, yet law never seems to have grown up to be a science in any republic of ancient Greece^h.” This remark seems to be well founded. At that period however the Greeks greatly surpassed every other people in legislative wisdom and refinement. The Roman legislators appear to have been chiefly indebted to Athensⁱ; and an examination of the Attic laws^k may af-

^h Smith’s *Wealth of Nations*, vol. iii. p. 176.

ⁱ “Sunt igitur,” says Ruhnkenius, “duodecim Tabulæ fons omnis publici privatique juris: duodecim Tabularum fons Græcorum leges, Atheniensium maxime.” (*Oratio de Græcia Artium ac Doctrinarum Inventrice: Opuscula*, p. 89. Lugd. Bat. 1807, 8vo.)

^k Meursius de *Legibus Atticis*. Traj. ad Rhen. 1685, 4to. *Petiti Leges Atticæ*, a Wesselingio. Lugd. Bat. 1742, fol.—I have met with two very recent contributions to this branch of knowledge. “M. H. E. Meieri *Historiæ Juris Attici de Bonis Damnatorum et Fiscalium Debitorum libri duo*.” Berolini, 1819, 8vo. “*De Comitibus Atheniensium libri tres*. Scripsit G. F. Schömann.” Gryphiswaldiæ, 1819, 8vo. The following passage occurs in Schömann’s dedication: “Verissime illud nuper abs te dictum est, Boeckhi, vir celeberrime, Græcarum antiquitatum doctrinam vixdum supra prima initia evectam esse. Plurimæ enim earum partes gravissimæ et cognitu dignissimæ aut parum adhuc explicatæ sunt, aut plane neglectæ et prætermisæ jacent. Imprimis autem de jure Atheniensium publico privatoque tam multa vulgo perperam

ford some pleasure and instruction to a civilian competently provided with philological learning. This provision however is indispensable; great talents and even genius will not supply the deficiency. What author has treated of jurisprudence with penetration superior to that of Montesquieu? But his classical erudition, it may very safely be affirmed, was much inferior to his sagacity and refinement; and several critics, scholars by profession, have accordingly detected him in errors which a more complete knowledge of the Roman language and history would have enabled him to avoid¹.

traduntur, tam multa omnino ignorantur, ut ne ad oratores quidem Atticos intelligendos satis instructi simus, atque in quavis fere pagina iis difficultatibus impediatur, ex quibus neque interpretes neque antiquitatum scriptores nos exsolvant."

¹ Ernesti Animadversiones Philologicæ in librum Francicum de Causis Legum: Opuscula Philologica et Critica, p. 52. Amst. 1764, 8vo.— See likewise Heyne's *Opuscula Academica*, vol. i. p. 182, and Crevier's *Observations sur le livre de l'Esprit des Loix*. Paris, 1764, 12mo.— Hommelius thus concludes his observations on Montesquieu: "Demus etiam aliquid gentis levitati, atque illud cogitemus, non solere Gallos ex fontibus haurire, sed ex versionibus auctorum veterum ineptis et epitomarum ludibriis." (*Litteratura Juris*, p. 36.)

LIST OF BOOKS

UNIVERSITY OF CHICAGO

STUDY OF THE CIVIL LAW

APPENDIX.

Quænam est autem ars, quænam facultas, cui tanta eruditio sit implicata, quantam complectitur jurisprudentia, ex qua nativa rerum singularum vocabula, et arcana Latinitatis, et selectiora dicendi genera ducuntur, et recondita notitia vetustatis eruitur, et scientia temporum atque factorum, non communis illa quidem et pervulgata, sed sanctior atque selectior, ita ut unius jurisprudentiæ studium Græcam atque Romanam eruditionem trahat universam ?

GRAVINÆ Origines Juris Civilis, præf.

LIST OF BOOKS

CONNECTED WITH THE

STUDY OF THE CIVIL LAW.

☞ *Original editions have no particular mark. Subsequent editions are distinguished by an asterisk.*

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- Augustini Emendationes et Opiniones, &c. *Lugd. 1559, 8vo.—
 “Quibus,” says Hen. Valesius, “nihil est acutius atque solertius.”
 (*De Critica*, p. 162.)
- De Legibus et Senatusconsultis, cum Notis F. Ursini. Romæ, 1583, 4to.
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- Berriat St. Prix, Histoire du Droit Romain, suivie de l' Histoire de Cujas. Paris, 1821, 8vo.
- Bertrandus de Jurisperitis. Tolosæ, 1617, 4to.
- Best, Ratio Emendandi Leges. Ultraj. 1707, 8vo.
- Bever's Hist. of the Legal Polity of the Roman State. Lond. 1781, 4to.
- Discourse on the Study of Jurisprudence and the Civil Law. Oxford, 1766, 4to.
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- Borgo, Dissertazione sopra l' Istoria de' Codici Pisani delle Pandette. Lucca, 1764, 4to.
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- De l' Impôt du Vingtième sur les Successions, et de l' Impôt sur les Marchandises, chez les Romains. Paris, 1766, 8vo.
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- Brenkmanni Historia Pandectarum ; seu Fatum Exemplaris Florentini. Traj. ad Rhen. 1722, 4to.
- Epistola ad Fr. Hesselium : qua examinantur præcipua capita Epistolæ G. Grandi de Pandectis ; nec non Dissertationis similis argumenti, auctore C. G. Schwarzio. Traj. ad Rhen. 1735, 4to.
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These three volumes, which are all that have yet appeared, consist of annotations on the first nineteen books. The very learned editor, Professor Smalenburg of Leyden, has added copious animadversions. His opinion of Schultingius he expresses thus : “ Si Cujacium excipias, omnium Jctorum principem merito dixeris.” Præf. p. viii.

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This work, together with the controversial tracts of Sigonius and Gruchius respecting the comitia, may be found in Grævius's *Thesaurus Antiquitatum Romanarum*, tom. i. It was published under the name of J. Sarius Zamoscius.

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- Wissenbachii Disputationes ad Instituta Imperialia. * Franeq. 1700, 4to.
- Wood's Institute of the Civil Law. * Lond. 1721, 8vo.
- Zouchei Elementa Jurisprudentiæ. * Lugd. Bat. 1652, 12mo.—Rich-
ard Zouch, LL. D. was professor of the civil law in the university of
Oxford, and judge of the high court of admiralty. He is the author
of other juridical works, in English as well as in Latin.

Irving, David,

Observations on the study of the civil law

Edinburgh 1823

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